

# LEASE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_

2003; by and between the City of Lincoln, Nebraska, a municipal corporation, (hereinafter "Lessor") and Capital Towing Inc., a Nebraska corporation, (hereinafter, "Lessee").

In consideration of the mutual promises and the covenants contained herein the parties agree as follows:

1. Premises. Lessor does hereby demise and lease unto Lessee and Lessee does hereby lease from Lessor, the Premises legally described as:

101 Charleston Street, Lincoln, Nebraska,  
irregular tract part of NW NW 23-10-6

together with the structure located thereon (hereinafter "Leased Premises").

2. Term. This lease is for a term of four (4) years with option to renew, commencing on November 1, 2003, and ending on October 31, 2007 unless terminated sooner as specifically set forth in this lease.

3. Rent. The Lessee agrees to pay Lessor yearly rent in the amount of Sixty Thousand Dollars (\$60,000.00) for each of the four years of this Lease Agreement.

Quarterly installments of Fifteen Thousand Dollars (\$15,000.00) shall be payable on the last day of December, March, June, and September at the office of the City Treasurer of the City of Lincoln, Nebraska, or to such other person, corporation, or association that Lessor may direct. The total rent payment for the four year duration of this Lease shall be Two Hundred Forty Thousand Dollars (\$240,000.00)

Any other sums of money or charges to be paid by the Lessee pursuant to the provisions of any other sections in the Lease shall be designated as "additional rent" and shall be due, and payable, in the manner provided herein for rent payments.

If any rent or additional rent is not paid within ten (10) days of the date when due, interest shall be due on the amount remaining to be paid at the rate of sixteen percent (16%) per annum, or the maximum interest rate permitted under law, whichever is the lesser, from the date such amount was due until such rent or additional rent is paid.

4. Use of Premises. Lessee shall use the Leased Premises as a vehicle impound lot as more particularly set forth in the Contract between Lessee and Lessor entered into the conjunction with the Lease Agreement, commonly referred to as "The City Tow Contract," and Bid Specification No. 03-198 and for other purpose as agreed to in writing by the City. Lessee agrees to comply with all applicable laws, ordinances, and regulations in connection with its use of the Leased Premises. Lessee further agrees it will not allow any gambling or other immoral or unlawful practices upon the Leased Premises, not permit the sale, possession, or consumption of liquor or any alcoholic beverage thereon, nor do or permit anything to be done in or about the Leased Premises which would cause a nuisance to Lessor or any other property owner.

5. Maintenance and Repair. Lessee, at its own expense, shall repair and maintain in good condition the exterior and structural parts of the building or buildings on the Leased Premises including

the roof, exterior walls, and utility services and shall repair and maintain in good condition the drives, roadways, sidewalks, parking facilities, and fence located at the Leased Premises. Lessee acknowledges inspection of the Leased Premises and acknowledges the Leased Premises are in good order and repair as of the date of the execution of this Lease Agreement.

6. Alterations. Lessee may make alterations or improvements of the Leased Premises as it deems appropriate at Lessee's expense, only with the prior written permission of the Lessor. Any alterations or improvements shall not affect the structural integrity of the Leased Premises and buildings nor diminish the value of the building on the Leased Premises. Any approved alterations or improvements shall be completed in a good workmanlike manner with first-class materials. Lessee shall do all things necessary to prevent the filing of and construction lien against the Leased Premises or the buildings in which the alterations or improvements are made by any work, labor, service performed, or any materials applied or claimed to have been performed or supplied to Lessee. If any such liens shall at any time be filed, Lessee shall give Lessor written notice of such filing and Lessee shall either cause the same to be vacated and canceled of record with thirty (30) days after the date of the filing thereof, or, if Lessee in good faith determines such liens shall be contested, Lessee shall furnish such security by surety bond or otherwise as may be necessary or be prescribed by law to release the same as a lien against the real property and to prevent any foreclosure of any such lien during the pendency of such contest. If Lessee should fail to vacate or release such lien in the manner or in the time required, then, in addition to any other right or remedy of the Lessor resulting from Lessee's said default, Lessor may but shall not be obligated to, vacate or release the same either by paying the amount claimed due or by procuring the release of such lien by giving security or in such manner as may be prescribed by law, and Lessee shall thereupon repay the Lessor, upon demand, all sums disbursed or deposited by lessor pursuant to the forgoing, including Lessor's cost and expense and reasonable attorney's fees incurred in connection therewith.

Any alterations or improvements of the Leased Premises shall become the property of the Lessor at no expense to the Lessor upon the expiration or termination of this Lease.

7. Fixtures. All fixtures of any kind and nature not present on the Leased Premises at the beginning of the Lease term including furnishings, equipment, trade fixtures, and other personal property hereafter placed or kept on the Leased Premises by Lessee shall be the sole property of Lessee. Lessee may, during the term of this Lease, remove any personal property of the Lessee provided Lessee shall repair all damage to the Leased Premises resulting from such removal. Lessee further agrees to pay all bills promptly and to keep all personal property placed on said premises by Lessee absolutely free from all liens and encumbrances of every kind and nature.

8. Utilities. Lessee shall pay all utility expenses including, but not limited to, water, gas, electricity, heating, cooling, and telephone, as said charges shall become due during the entire term of this Lease, and before said charges shall become delinquent. Lessee shall, at all times during the term of this Lease, have telephone service at the Leased Premises in Lessee's name.

9. Taxes and Special Assessments. Lessee shall pay all taxes on the real and personal property described herein which may be levied and assessed during the term of this Lease. Lessee further agrees to pay all special assessment and installments thereof which may become payable during the term of this Lease.

10. Insurance. Lessee shall, at all times during the term of this Lease secure and maintain at its own expense, fire, tornado, wind storm, flood, and extended coverage insurance policies insuring the buildings, fixtures and improvements on the Leased Premises. All insurance required hereunder shall be written by a reputable, reasonable insurance company licensed in the State of Nebraska in an amount equal to the replacement cost thereof. Lessee shall further secure and maintain a general liability policy covering the Leased Premises, including any buildings thereon, of not less than One million Dollars (\$1,000,000.00) for each occurrence.

In addition, Lessee shall, at all times during the term of this Lease secure and maintain, at its own expense, the following insurance coverages which shall be written by reputable, reasonable insurance companies licensed in the State of Nebraska.

A. A general liability policy or policies covering the Leased Premises against damages on account of bodily injury, including death accident suffered or alleged to have been so suffered, for any cause; such general liability policy or policies shall list the Lessee and or Lessor as named insured and shall contain limits of not less than \$1,000,000 for each occurrence.

B. Fire, tornado, wind storm, and extended coverage insurance policies insuring the personal property of Lessee on the Leased Premises in the amount equal to the replacement cost thereof.

C. Any other insurance as may be required by law for insuring workers' compensation injuries for any person or persons employed by or working for Lessee.

11. Indemnification and Subrogation. Lessor shall not be liable to Lessee, or to any other person whomsoever, for any injury loss, or damage to any person or property on or upon the Leased Premises, and Lessee hereby agrees to indemnify and hold harmless Lessor from any loss or damages that may arise or be sustained by Lessor in relation to this Lease, by reason of the claims, demands, actions and causes of action of any person or persons or entities, and agrees to defend any action that may be brought against Lessor for damages or otherwise, arising from lessee's occupancy, use, or maintenance of the Leased Premises.

12. Right of Entry. Lessor shall have the right of entry during the term of this Lease, personally or by its agents, to enter the Leased Premises at any time to examine the same. Lessor shall have the right to show the Leased Premises at any time within sixty (60) days prior to the expiration of this Lease.

13. Damage to the Destruction of Leased Premises. If the leased Premises or any portion thereof are so damaged or destroyed by fire or other casualty as to render the Leased Premises or any material portion thereof unfit for occupancy then Lessee or Lessor shall each have the right of canceling this Lease by giving written notice to the other within thirty (30) days of such damage, and the proceeds of the fire and extended coverage insurance policy shall be paid to and be the sole property of Lessor, except to the extent such proceeds relate to the property of Lessee which is located on the Leased Premises. Lessee shall be entitled to pay only a prorated portion of any rent covering the term between the last rental payment and the date of cancellation. If this Lease is not terminated pursuant to this paragraph, then such insurance proceeds shall be applied to the repair of the Leased Premises. In the event the Lease is not terminated pursuant to this paragraph, Lessee shall not be entitled to any proration or abatement of rent.

14. Lessee's Default. If Lessee shall, at any time, fail to observe, keep, or perform, in all material respects, any of the agreements, covenants, conditions, requirements, and restrictions of this Lease, the terms and conditions of the City Tow Contract, or Bid Specifications No. 03-198, or any reasonable rule of Lessor of which Lessee has been given notice, and shall continue in such default for fifteen (15) days after written notification by Lessor, then this Lease shall, without further delay, become void, at the option of Lessor, upon written notice of Lessor's election to exercise such option and thereupon Lessor shall be entitled to exercise such option and Lessor shall be entitled to immediate possession of the Leased Premises and property thereby leased together with all fixtures therein and may enter and take possession thereof forcibly if necessary without being guilty of unlawful detained and Lessor may bring such summary action as may be provided by law for recovery of the Leased Premises and property. The Lessee shall be and will remain responsible for all liabilities incurred under the covenants and agreements of this Lease, including rent payments and other sums due herein. A waiver by Lessor of any default, breach, or failure on the part of the Lessee under this Lease shall not be construed as a waiver of any subsequent or different default, breach or failure. Additionally, this Lease shall become void and Lessee shall immediately surrender the property upon the expiration, voiding, or termination of the City Tow Contract.

15. Assignment. Neither the Leased Premises nor any part thereof shall be sublet, nor shall this Lease be assigned in whole or part, without the express written consent of the Lessor.

16. Surrender of Premises at End of Term. Lessee agree that upon the termination of this Lease, it will surrender, yield and deliver the Leased Premises in good and clean condition, except the effects of reasonable wear and tear. Lessee shall remove its inventory, equipment, furniture, trade fixtures, and other personal property. Any property which the Lease fails to remove within five (5) days of termination of this Lease shall be presumed to be abandoned and shall thereupon be the property of the Lessor.

17. Notices. All notices provided to be given or which may be given by the Lessee or the Lessor shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, return receipt requested, and postage prepaid and addressed as follows:

To the Lessor at:

City Finance Department  
Attn: Vince M. Mejer, Purchasing Agent  
440 So. 8<sup>th</sup> St., Suite 200  
Lincoln, NE 68508

To the Lessee at:

Capital Towing Inc.  
c/o James Schwartztrauber, President  
101 Charleston St.  
Lincoln, NE 68508

18. Binding Effect. This Lease is binding upon and endure to the benefits of the parties hereto, their successors and assigns.

ATTEST:

**CITY OF LINCOLN, NEBRASKA**  
A Municipal Corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**CAPITAL TOWING INC.**  
A Nebraska Corporation

\_\_\_\_\_  
James Schwartztrauber

STATE OF NEBRASKA     }  
                                      } ss.  
COUNTY OF LANCASTER }

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by \_\_\_\_\_, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City of Lincoln, Nebraska.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     }  
                                      } ss.  
COUNTY OF LANCASTER }

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by James Schwartztrauber, President of Capital Towing Inc., a Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public